

David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington St.
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 3.2,)	No. R-20-
RULE 4.1, AND RULE 41, FORMS 2(a))	
AND 2(b), ARIZONA RULES OF)	
CRIMINAL PROCEDURE)	
_____)	

Pursuant to Rule 28, Rules of the Supreme Court, Petitioner requests the Court to amend Rule 3.2 (“Content of a Warrant or Summons”), Rule 4.1 (“Procedure Upon Arrest”), and Rule 41, Forms 2(a) (“Arrest Warrant: Superior Court”) and 2(b) (“Arrest Warrant: Limited Jurisdiction Courts”) of the Arizona Rules of Criminal Procedure. The proposed amendments are shown in the Appendix.

(1) Background. Petitioner convened an Arrest Warrant Workgroup shortly before the June 2019 Judicial Conference. The workgroup was led by Jerry Landau, the Government Affairs Director of the Administrative Office of the Courts (“AOC”). Workgroup members included judicial officers from general and limited jurisdiction courts in four counties (Coconino, Maricopa, Mohave, and Pima), as

well as AOC attorneys and specialists.¹ The workgroup met 4 times before filing this petition.

Establishment of the workgroup was prompted by memos prepared by the Maricopa County Attorney's Office ("MCAO") and the Pinal County Attorney's Office ("PCAO"). Here is the issue posed in those memos:

If a defendant is arrested pursuant to a warrant and the warrant includes a predetermined bond amount, may the defendant be released upon posting the bond and without appearing before a magistrate for a Rule 4.2 initial appearance?

After discussing statutes, court rules, and case law, the MCAO concluded, and advised the Maricopa County Sheriff, that all arrested defendants, even those who post a pre-set bond, should be seen by the initial appearance magistrate, who could then determine the totality of release conditions. In response, the Maricopa County Sheriff distributed a May 8, 2019 memo to its "Maricopa County Law Enforcement Partners" that said,

Based on the legal guidance received, effective immediately, the Maricopa County Sheriff's Office can no longer accept bond payments for individuals circumventing a required initial appearance with the court. Additionally, the MCSO bonds and fines window can no longer accept bond payments by individuals with warrants to avoid arrest and booking into the MCSO jail system. I understand that this has been a practice in

¹ Judge members on the workgroup were the Hon. Patti Starr (Maricopa Superior), Hon. Dan Slayton (Coconino Superior), Hon. Jill Davis (Mohave [Lake Havasu City] Justice), Hon. Tony Riojas (Tucson City), and Hon. Elizabeth Finn (Glendale Municipal). The Hon. Ronda Fisk and the Hon. Melissa Zabor (both from Maricopa Superior) also participated in the discussions. AOC members included David Withey (AOC Legal), Paul Julien (AOC Judicial Education Officer), and Don Jacobson (AOC Court Services). Theresa Barrett and Mark Meltzer (AOC Court Services) served as the workgroup's staff persons.

the past to avoid taking officers off the street, but based on the legal opinion received, law enforcement officers can no longer facilitate release on warrants prior to defendants appearing in front of a judge in person prior to release from custody.

The PCAO reached a similar conclusion as its Maricopa counterpart:

... to fulfill the actions necessitated by a warrant arrest, the arrestee must be held until he/she has also appear[ed] before the magistrate who issued the warrant or the nearest or most accessible magistrate in the same county before he/she can be released from custody—even if he/she posts bond prior to the Warrant-Arrest IA.

(2) Discussion. A.R.S. § 13-3897 (“duty of officer after arresting with a warrant”) is foundational for the proposition that a person arrested on a warrant must have an initial appearance before a magistrate. The statute provides,

The officer making the arrest shall without unnecessary delay take the person arrested before the magistrate who issued the warrant or, if that magistrate is absent or unable to act, before the nearest or most accessible magistrate in that county.

Rule 4.1(c) of the Rules of Criminal Procedure (“on arrest with a warrant”) is consistent with the statutory directive. This rule provides that “a person arrested in the county where the warrant was issued must be taken before the magistrate who issued the warrant for an initial appearance...” Rule 3.2(a)(4) (“content of a warrant or summons”) includes similar language. Rule 41, Forms 2(a) (currently titled, “arrest warrant: superior court”) and 2(b) (currently titled, “arrest warrant: limited jurisdiction courts”) are also in accord. Both warrant forms begin with the words, “You are commanded to arrest and bring the defendant before this court.”

Notwithstanding these authorities, workgroup members made observations and expressed concerns that supported a defendant's release upon posting the bond amount, without requiring an initial appearance:

- When a magistrate puts a bond amount in the warrant, the magistrate has explicitly expressed the objective of releasing, and the desire to promptly release, the defendant when that bond amount is posted.
- Even a short time in jail could increase the possibility of recidivism, so the defendant should be released as soon as the bond is posted.
- If the defendant is arrested on a warrant for failure to pay a financial obligation, the defendant should be released upon payment of the bond.
- As a practical matter, victims are not notified of a defendant's arrest on a misdemeanor warrant.
- There is a significant cost for incarcerating a defendant on a misdemeanor warrant.

On the other hand, workgroup members recognized the benefit of requiring an initial appearance before a magistrate prior to the arrested defendant being released:

- On an arrest pursuant to a warrant, the initial appearance magistrate may not have access to a completed Form 4 or a report from pre-trial services, in which case the magistrate is "flying blind" and needs to have a colloquy with the defendant (particularly if the defendant was arrested on a warrant from another county) to determine release conditions.
- Even if the warrant indicates a bond amount, the length of time between issuance of the warrant and the arrest could be substantial, and circumstances supporting the original amount might no longer apply.
- In non-warrant arrests, the magistrate does not determine a bond amount until the magistrate has conducted an initial appearance.

The workgroup concluded:

- (1) the Criminal Rules should distinguish warrants concerning a felony from warrants concerning misdemeanors;
- (2) the Criminal Rules should permit a defendant arrested on a misdemeanor warrant—at the issuing magistrate’s discretion—to post a bond without the need to see an initial appearance magistrate; and
- (3) a defendant who is arrested on a felony warrant should see a magistrate before being released, even if the warrant contains a recommended bond amount and the defendant is able to immediately post that bond.

As the result of a suggestion by a workgroup member and participants from the Superior Court in Maricopa County, the workgroup proposes that the issuing magistrate should have the ability to “recommend” the bond type and amount on a felony warrant. The issuing magistrate might have more information concerning an individual defendant’s circumstances than an initial appearance magistrate with only scant information, and therefore could more knowledgeably propose the type and amount of a bond. However, the bond is “recommended” because the initial appearance magistrate who sees the defendant would have discretion to disregard the issuing magistrate’s recommendations and make an independent determination concerning the bond.

(3) Proposed Rule Changes. The lynchpin of the recommendations in this petition is a differentiation in the procedure for misdemeanor and felony warrants. This petition proposes that a defendant arrested on a misdemeanor warrant can be released upon posting the bond and without the necessity of an initial appearance. A defendant arrested on a felony warrant must have an initial appearance prior to release. Petitioner accordingly proposes the following rule changes.

(a) Rule 3.2 (“Content of a Warrant or Summons”). Current Rule 3.2(a) (“warrant”) specifies the contents of a warrant. Rule 3.2(a) has 5 untitled subparts. Petitioner proposes that the first 4 subparts be preceded by a new subtitle, “mandatory provisions,” followed by the content of the 4 current subparts without changes to their text. The fifth subpart currently requires the warrant to “state the amount of an appearance bond, if the defendant is bailable as a matter of right.” Petitioner proposes to eliminate this text and to instead add two new subparts, one with the title, “bond for felony warrants,” and the other titled “bond for misdemeanor warrants.”

The new provision for a felony warrant would allow the issuing magistrate, if the defendant is eligible for release, to include on the warrant “a recommended bond (deposit, cash, unsecured, or secured appearance) and a recommended bond amount.” The subpart would then say, “However, when the warrant is issued for a felony offense, the defendant must not be released on bond without having an initial

appearance before a magistrate.” Therefore, a defendant must have a mandatory initial appearance following arrest on a felony warrant, even if the defendant is able to post the bond before that appearance.

The subpart on misdemeanor warrants similarly allows the warrant to “state the amount of a deposit, cash, unsecured, or secured appearance bond.” However, because the proposed amendments to Rule 4.1 permit a defendant arrested on a misdemeanor warrant to post bond before the initial appearance, the bond amount is not qualified as “recommended.”

(b) **Rule 4.1 (“Procedure Upon Arrest”)**. The proposed rule would change the title of section (a), from “prompt initial appearance” to “prompt appearance before a magistrate,” and the text of the first sentence would change accordingly. Essentially, the proposed rule would require, like the current rule, that an arrested person be taken before a magistrate for an initial appearance within 24 hours after arrest. The most significant change to section (a) is the addition of a new last sentence that correlates with the above change to Rule 3.2. The new sentence says,

If a misdemeanor warrant states the amount of a deposit, cash, unsecured, or secured appearance bond, as provided in Rule 3.2(a)(2), and the arrested person has posted the bond prior to the initial appearance, the arrested person must be promptly released from custody.

This new sentence would permit the release from custody of an arrested misdemeanant as soon as the bond is posted, without the necessity of an initial appearance.

(c) Rule 41, Forms 2(a) (currently titled “Arrest Warrant: Superior Court”) and 2(b) (currently titled “Arrest Warrant: Limited Jurisdiction Courts”). These two warrants forms would need to be conformed to the foregoing rule changes. However, as a preliminary matter, Petitioner proposes changing the current titles of Forms 2(a) and 2(b). Either the superior court or a limited jurisdiction court has the authority to issue, and in practice do issue, warrants for felonies and misdemeanors. The critical distinction concerning these warrants is not identifying the level of the court issuing the warrant, but rather, whether the court is issuing the warrant for a felony or a misdemeanor. Accordingly, and as shown in the Appendix, Petitioner proposes changing the title of Form 2(a) to “Felony Arrest Warrant,” and the title of Form 2(b) to “Misdemeanor Arrest Warrant.”

The felony warrant, Form 2(a), would include this new bolded sentence: **“The defendant must not be released on bond without having an initial appearance before a magistrate.”** The issuing magistrate could still include a bond amount on the felony warrant form underneath that sentence, but the amount would be “recommended” and could be changed by the initial appearance magistrate. The form would also allow the issuing magistrate to provide an explanation for the recommended amount (for example. “the defendant has had several prior failures to appear,” or “the defendant has strong ties to the community”), information that might benefit the initial appearance magistrate. Alternatively, the form would allow the

issuing magistrate to indicate “no recommendation” concerning the amount. The revised form would also permit the issuing magistrate to indicate the type of bond (i.e., secured appearance, unsecured appearance, deposit, or cash) being recommended.

By comparison, the misdemeanor warrant, Form 2(b), would be modified so that the corresponding sentence would say, “☐ Yes ☐ No The defendant may be released without having an initial appearance before a magistrate upon the posting of a ☐ secured appearance ☐ unsecured appearance ☐ deposit or ☐ cash bond in the amount of \$____.” Because the posting of that amount would result in the defendant’s release, it is an actual amount rather than a recommended amount. If the defendant is unable to post that amount following arrest, or if the issuing magistrate declines to include a bond amount on a misdemeanor warrant, the initial appearance magistrate would determine the defendant’s release conditions as provided in Rule 4.2(a)(7).

There are other changes to both Form 2(a) and Form 2(b) that improve their organization and clarity. One change concerns the location of the fingerprinting requirement. The requirement to fingerprint a defendant now appears midway through the form, where it can easily be overlooked by the arresting agency. Petitioner recommends moving the requirement into the caption of the form, directly

below the words “Arrest Warrant,” where a law enforcement officer can readily see it.

There is another noteworthy, recommended change to the first paragraph of these forms. The forms currently say,

YOU ARE COMMANDED to arrest and bring the defendant before this court. If this court is unavailable or if the arrest is made in another county, you must take the defendant before the nearest or most accessible magistrate.

The workgroup believed this was an incomplete statement of the requirements of A.R.S. § 13-3897 (the statute is set out verbatim at page 3 of this petition), and suggests modifying it to say,

YOU ARE COMMANDED to arrest and bring the defendant before this court. If this court is unavailable, you must take the defendant to the nearest or most accessible magistrate in this county. If the arrest is made in another county, you must take the defendant before the nearest or most accessible magistrate in that county.

The appendix contains revised versions of Forms 2(a) and 2(b). Petitioner recommends that the Court abrogate current Rule 41, Forms 2(a) and 2(b), and adopt the revised versions of Forms 2(a) and 2(b). Petitioner has not included redline versions because of the extent of the changes to both forms.

(4) Pre-filing Vetting. The workgroup presented earlier versions of its proposed rule changes to the Committee on Superior Court (“COSC”) and the Committee on Limited Jurisdiction Courts (“LJC”). These presentations did not result in noteworthy modifications to the drafts (modifications were primarily

generated within the workgroup), with the understanding that COSC and the LJC would entertain motions to support the proposed changes after the filing of this rule petition. The workgroup similarly deferred a request for pre-petition comments by other stakeholders, such as prosecutors and defense counsel, until after the filing date of the petition.

(5) Conclusion. Petitioner accordingly requests that the Court open this petition to amend Rules 3.2, 4.1, and 41, Forms 2(a) and 2(b) for public comments.

RESPECTFULLY SUBMITTED this 8th day of January 2020.

David K. Byers, Administrative Director
Administrative Office of the Courts

Appendix

Proposed amendments to the Rules of Criminal Procedure, Rules 3.2(a) and 4.1(a). Deletions are shown by ~~strikethrough~~. Additions are shown by underline.

Rule 3.2. Content of a Warrant or Summons

(a) Warrant.

(1) Mandatory Provisions. A warrant must:

- (1 ~~A~~) be signed by the issuing magistrate;
- (2 ~~B~~) contain the defendant's name or, if the defendant's name is unknown, any name or description by which the defendant can be identified with reasonable certainty;
- (3 ~~C~~) state the charged offense and whether the offense is one to which victims' rights provisions apply;
- (4 ~~D~~) command that the defendant be arrested and brought before the issuing magistrate or, if the issuing magistrate is absent or unable to act, the nearest or most accessible magistrate in the same county or in the county of arrest if the defendant is arrested outside the county where the warrant was issued;

(2) Bond for Felony Warrants. If the defendant is eligible for release at the initial appearance, the issuing magistrate may include on the felony warrant a recommended bond (deposit, cash, unsecured, or secured appearance) and a recommended bond amount. However, when the warrant is issued for a felony offense, the defendant must not be released on bond without having an initial appearance before a magistrate.

(53) Bond for Misdemeanor Warrants. If the offense for which the warrant is issued is a misdemeanor, the warrant may state the amount of an deposit, cash, unsecured, or secured appearance bond, if the defendant is bailable as a matter of right.

(b) Summons. [No change]

Rule 4.1. Procedure upon Arrest

(a) Prompt ~~Initial~~ Appearance Before a Magistrate. An arrested person must be promptly taken before a magistrate for an initial appearance. At the initial appearance, the magistrate will advise the arrested person of those matters set forth in Rule 4.2. If the

initial appearance does not occur within 24 hours after arrest, the arrested person must be immediately released from custody. If a misdemeanor warrant states the amount of a deposit, cash, unsecured, or secured appearance bond, as provided in Rule 3.2 (a)(3), and the arrested person has posted the bond prior to the initial appearance, the arrested person must be promptly released from custody.

(b) through (e). [No change]

Form 2(a): Felony Arrest Warrant

COURT

County, Arizona

STATE OF ARIZONA, Plaintiff

-vs

Defendant(s) (First, MI, Last)

Address: _____

CASE NO.

ARREST WARRANT

Fingerprint instruction upon arrest:

☐ 01 criminal history [check if required]**TO: ANY AUTHORIZED LAW ENFORCEMENT OFFICER**

YOU ARE COMMANDED to arrest and bring the defendant before this court. If this court is unavailable, you must take the defendant to the nearest or most accessible magistrate in this county. If the arrest is made in another county, you must take the defendant before the nearest or most accessible magistrate in that county.

The defendant is accused of an offense or violation based on the following (examples: initial arrest warrant, failure to appear in court, probation violation): _____

This offense or violation is described as follows:

Offense Date	Statute/Rule & Literal Description	Class
--------------	------------------------------------	-------

The defendant must NOT be released on bond without having an initial appearance before a magistrate.

If the defendant is eligible for release at the initial appearance, the recommended amount for a
[☐ secured appearance] [☐ unsecured appearance] [☐ deposit] or [☐ cash] bond is \$ _____

☐ Explanation regarding the recommended amount: _____

☐ There is no recommendation.

☐ The defendant is not eligible for release on bond. [Explain / add additional orders of the court]

☐ Yes ☐ No ☐ Unknown The offense is, or is materially related to, a victims' rights applicable offense.

BY ORDER OF: The Honorable _____, Judge of _____ Court. [If signed by the Deputy Clerk]

Date

[Printed name of the Judge or Deputy Clerk of the Superior Court]

SEX:	RACE:	DOB:	HGT:	WGT:	EYES:	HAIR:
ADDRESS: [TYPE:]						
COURT ORI:		WARRANT #: *		EXTRADITION: *		
DL#: *		STATE: *		PURGE DATE: *		
LE AGENCY: [Arresting Agency]		CITATION #: *		DR #: *		

[*optional information can vary by court and may include the last four digits of the defendant's SSN]

CERTIFICATE OF EXECUTION

I certify that the defendant was arrested at _____ a.m./p.m. on _____, 20____,
(month) (day) (year)
and presented defendant before Judge _____ at _____.

Date

Agency

Deputy Sheriff / Officer

Badge #

Form 2(b): Misdemeanor Arrest Warrant_____**COURT** _____**County, Arizona**

STATE OF ARIZONA , Plaintiff Defendant(s) (First, MI, Last) Address: _____	CASE NO. ARREST WARRANT Fingerprint instruction upon arrest: <input type="checkbox"/> 01 criminal history [check if required]
--	---

TO: ANY AUTHORIZED LAW ENFORCEMENT OFFICER

YOU ARE COMMANDED to arrest and bring the defendant before this court. If this court is unavailable, you must take the defendant to the nearest or most accessible magistrate in this county. If the arrest is made in another county, you must take the defendant before the nearest or most accessible magistrate in that county.

The defendant is accused of an offense or violation based on the following: (examples: initial arrest warrant, failure to appear in court, probation violation): _____

This offense or violation is described as follows:

Offense Date	Statute/Rule & Literal Description	Class
---------------------	---	--------------

☐ Yes ☐ No The defendant may be released without having an initial appearance before a magistrate upon the posting of a [☐ *secured appearance*] [☐ *unsecured appearance*] [☐ *deposit*] or [☐ *cash*] bond in the amount of \$ _____.
☐ Yes ☐ No ☐ Unknown The offense is, or is materially related to, a victims' rights applicable offense.

Date_____
Judge [Judge's Name Printed]

SEX:	RACE:	DOB:	HGT:	WGT:	EYES:	HAIR:
ADDRESS: [TYPE:]						
COURT ORI:		WARRANT #: *		EXTRADITION: *		
DL#: *		STATE: *		PURGE DATE: *		
LE AGENCY: [Arresting Agency]		CITATION #: *		DR #: *		

[*optional information can vary by court and may include the last four digits of the defendant's SSN]

CERTIFICATE OF EXECUTION

I certify that the defendant was arrested at _____ a.m./p.m. on _____, 20____,
(month) (day) (year)
and presented defendant before Judge _____ at _____.

Date_____
Agency_____
Deputy Sheriff / Officer_____
Badge #